

**State of Kansas
Department of Health and Environment**

Notice of Hearing on Proposed Administrative Regulations

The Kansas Department of Health and Environment, Division of Health, Bureau of Family Health, will conduct a public hearing at 10 a.m. Wednesday, November 20, 2013, in the Santa Fe Trail Conference Room, Suite 200 of the Curtis State Office Building, 1000 S.W. Jackson, Topeka, to consider the adoption of proposed new regulation K.A.R. 28-4-573; amendments to regulations K.A.R. 28-4-550, 28-4-564, 28-4-565, 28-4-568, and 28-4-569; and the revocation K.A.R. 28-4-552 and 28-4-556, pertaining to Kansas Infant-Toddler Services (KSITS), part C early intervention program.

A summary of the proposed regulations and the estimated economic impact follows:

Summary of Regulations:

K.A.R. 28-4-550. Definitions. Provides the definition of terms used in the Kansas infant toddler services (KSITS) regulations, and includes new and revised definitions.

K.A.R. 28-4-552. Screening activities. Revoked. The term screening process defined in K.A.R. 28-4-550 is now used to select the appropriate screening tool to determine the need for evaluation.

K.A.R. 28-4-556. Family service coordination. Revoked. The term family service coordination is now defined in the terms family service coordinator and family service coordination services in K.A.R. 28-4-550. K.A.R. 28-4-564 specifies the personnel requirements for a family service coordinator.

K.A.R. 28-4-564. Personnel requirements. Updates current requirements for state licensing oversight and personnel standards for early intervention service providers.

K.A.R. 28-4-565. Local tiny-k program responsibilities. Updates language to use the term local tiny-k program and specifies its responsibilities. Also adds language regarding the payor of last resort for early intervention services.

K.A.R. 28-4-568. Surrogate parents. Updates the definition of surrogate parents, also known as child advocates under KSITS, and specifies the methods for assigning child advocates.

K.A.R. 28-4-569. Resolution of complaints. Updates language to meet the requirements of federal regulations regarding resolution of complaints, mediation and due process hearing.

K.A.R. 28-4-573. System of payments. Defines a system of payments for the KSITS program.

Economic Impact:

Cost to the agency: It is anticipated that the costs incurred by KDHE to implement these regulations will be minimal and will be within the current budget. To decrease costs associated with continued implementation of the KSITS program, KDHE will provide oversight to the program. Current staff within the KSITS program will be utilized to support implementation of these regulations.

Cost to consumers: There is no known cost to consumers of this program. Services to children and families in the KSITS program are provided at no cost to families. Local tiny-k programs will see minimal or no costs added to daily activities, as most of the updates provide clarification and will not require an increase in resources.

Costs to other governmental agencies or units: There is no known increase in costs to other governmental agencies or units. Having local tiny-k programs that provide early intervention services across the state will improve outcomes for young children and their families. KSITS

seeks to minimize potential developmental delay and reduce costs for special education services when children with disabilities reach school age. High quality early intervention programs for vulnerable infants and toddlers can reduce the incidence of future problems in their learning, behavior and health status. Intervention is more effective and less costly when it is provided earlier in life rather than later.

The time period between publication of this notice and the scheduled hearing serves as the required public comment period of at least 60 days for the purpose of receiving written public comments on the proposed new, amended and revoked regulations. At any time during the public comment period any interested parties may submit written comments to Sarah Walters, Kansas Department of Health and Environment, Bureau of Family Health, 1000 S.W. Jackson, Suite 220, Topeka, 66612-1274, by fax at 785-296-8626, or by e-mail to swalters@kdheks.gov. During the hearing, all interested parties will be given a reasonable opportunity to present their views orally on the proposed regulations as well as an opportunity to submit their written comments. In order to give each individual an opportunity to present their views, it may be necessary for the hearing officer to request that each presenter limit any oral presentation to an appropriate time frame.

Complete copies of the proposed regulations and the corresponding economic impact statement may be obtained on the Kansas Infant-Toddler Services website at www.ksits.org or by contacting Sarah Walters at the address above, 785-296-6135 or fax 785-296-8626.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statement in an

accessible format. Requests for accommodation should be made at least five working days in advance of the hearing by contacting Sarah Walters.

Robert Moser, M.D.

Secretary of Health and Environment

September 25, 2012

Revised August 27, 2013

Kansas Department of Health and Environment

ECONOMIC IMPACT STATEMENT

Pursuant to the requirements of KSA 2011 [2012] Supp. 77-416, the Kansas Department of Health and Environment (KDHE) submits the following economic impact statement.

1. Regulation(s):

Proposed permanent regulations

KAR 28-4-550, amended
KAR 28-4-552, revoked
KAR 28-4-556, revoked
KAR 28-4-564, amended
KAR 28-4-565, amended
KAR 28-4-568, amended
KAR 28-4-569, amended
KAR 28-4-573, new

2. Brief description of each regulation(s) and what is intended to be accomplished by adoption.

28-4-550. Definitions. Provides the definition of terms used in the Kansas infant toddler services (KSITS) regulations, and includes new and revised definitions.

28-4-552. Screening activities. Revoked. The term screening process defined in KAR 28-4-550 is now used to select the appropriate screening tool to determine the need for evaluation.

28-4-556. Family service coordination. Revoked. The term family service coordination is now defined in the terms family service coordinator and family service coordination services in KAR 28-4-550. KAR 28-4-564 specifies the personnel requirements for a family service coordinator.

28-4-564. Personnel requirements. Updates current requirements for state licensing oversight and personnel standards for early intervention service providers.

28-4-565. Local tiny-k program responsibilities. Updates language to use the term local tiny-k program and specifies its responsibilities. Also adds language regarding the payor of last resort for early intervention services.

28-4-568. Surrogate parents. Updates the definition of surrogate parents, also known as child advocates under KSITS, and specifies the methods for assigning child advocates.

28-4-569. Resolution of complaints. Updates language to meet the requirements of federal regulations regarding resolution of complaints, mediation and due process hearing.

28-4-573. System of payments. Defines a system of payments for the KSITS program.

3. Is this regulation(s) mandated by federal law as a requirement for participating in or implementing a federally subsidized or assisted program?

Yes X

No

If yes, please explain.

The U.S. Department of Education, Office of Special Education Programs, published new regulations on September 28, 2011. As a part of a federal grant application and as specified in 34 CFR 303.203(b)(2) and 303.511, each application must include the methods used by KDHE to implement the payor of last resort and fiscal responsibility requirements in 34 CFR 303.511(b)(2) and (3).

4. Do the proposed regulations exceed the requirements of applicable federal law?

Yes

No X

If yes, please explain.

5. Description of Costs:

a. Cost to the agency:

It is anticipated that the costs incurred by KDHE to implement these regulations will be minimal and will be within the current budget. To decrease costs associated with continued implementation of the KSITS program, KDHE will provide oversight to the program. Current staff within the KSITS program will be utilized to support implementation of these regulations.

b. Cost to persons who will bear the costs and those who will be affected,(i.e. private citizens and consumers of the products or services) and are subject to the proposed rules and regulations or the enforcement:

There is no known cost to consumers of this program. Services to children and families in the KSITS program are provided at no cost to families. Local tiny-k programs will see

minimal or no costs added to daily activities, as most of the updates provide clarification and will not require an increase in resources.

c. Costs to other governmental agencies or units:

There is no known increase in costs to other governmental agencies or units. Having local tiny-k programs that provide early intervention services across the state will improve outcomes for young children and their families. Early intervention services prepare infants and toddlers for school, later life and help meet family needs. Families benefit from the information given to them in the early intervention program about their child's disability, positioning them to be their child's best advocate. KSITS seeks to minimize potential developmental delay and reduce costs for special education services when children with disabilities reach school age. High quality early intervention programs for vulnerable infants and toddlers can reduce the incidence of future problems in their learning, behavior and health status. Intervention is more effective and less costly when it is provided earlier in life rather than later.

6. Description of any less costly or less intrusive methods that were considered by the agency for the purpose of the rules and regulations and why such methods were rejected in favor of the proposed rules and regulations.

The regulations as written by KDHE are designed to be consistent with current federal regulations and national standards for early intervention systems. There are no other less costly or less intrusive methods to consider.

7. Verification of economic impact statement with League of Kansas Municipalities, Kansas Association of Counties and the Kansas Association of School Boards.

The above-mentioned regulations were determined as appropriate for consultation as to the economic impact with the League of Kansas Municipalities, Kansas Association of Counties and the Kansas Association of School Boards, pursuant to KSA 2011 [2012] Supp. 77-416.

Yes X

No

If yes:

Date Contacted and by what means (i.e., letter, email, etc.):

The above organizations will be contacted by email with the proposed regulations, economic impact statement and notice of hearing attached when the notice of hearing is published in the *Kansas Register*.

Response and comments received by:

League of Kansas Municipalities:

Kansas Association of Counties:

Kansas Association of School Boards:

K.A.R. 28-4-550. Definitions. (a) ~~“Center-based” means sites designed primarily for young children with disabilities to receive early intervention services.~~ “Assessment” means the initial and ongoing procedures used by qualified personnel to identify early intervention services.

(b) ~~“Child find” means a public and professional activities, including awareness activities, awareness program provided by community and state agencies that prepares information on the availability of early intervention services, disseminates information given to parents of infants and toddlers with disabilities to all primary referral sources, and adopts procedures for assisting the primary referral sources~~ for the purpose of identifying the potential need for early intervention services.

(c) “Collaboration” means the establishment and maintenance of open communication and cooperative working relationships among service providers and other caregivers and the family when identifying goals and delivering care to children.

(d) “Community” means an interacting population of various kinds of individuals in a common location.

~~(1) Families may define their communities in different ways depending on the type, intensity, and frequency of their needs and their culturally specific values.~~

~~(2) A community may exist at local, regional, or national levels.~~

~~(3) Local community means the geographic service area as defined by the local council.~~

~~(4) The service area may be defined using various boundaries, including city, county, parts of counties, or multi-county regions.~~

(e) “Community-based,” ~~when used to describe a place,~~ means ~~places a place~~ where small groups of infants and toddlers without disabilities are typically found, including child care centers ~~or family and~~ day care facilities.

(f) “Continuing education experience” means either of the following:

(1) College and university ~~course-work~~ coursework completed after ~~obtaining the an~~ individual receives a professional credential; or

(2) an inservice, workshop, or conference that offers ~~approved~~ professional continuing education credit.

(g) “Developmental delay” means any of the following conclusions obtained using ~~the appropriate standardized~~ evidence-based instruments and procedures in one or more areas of development, including cognitive, physical, communication, social or emotional, or adaptive development: :

(1) There is a discrepancy of 25 percent or more between chronological age, after correction for prematurity, and developmental age in any one area.

(2) ~~The child is functioning at 1.5 standard deviations below the mean in any one area.~~

(3) There are delays of at least 20 percent ~~or at least one standard deviation below the mean~~ in two or more areas.

~~(4)~~ (3) The informed clinical judgment opinion of ~~the a~~ multidisciplinary team concludes that a developmental delay exists when specific tests are not available or when testing does not reflect the child's actual performance. ~~The professional in the area or areas of delay shall be a member of the team.~~

(h) “Early intervention records” means reports, letters, and educational and medical records that are collected, maintained, or used by the local lead agency in the screening, evaluation, and development of an IFSP or in the delivery of services, or both.

(i) “Eligible,” when used to describe a child, means ~~that children,~~ a child from birth through two years, ~~have~~ who has one of the following:

- (1) A developmental delay or a known condition leading to a developmental delay; or
- (2) an established risk for developmental delay, ~~which is a diagnosed mental or physical condition that has a high probability of resulting in developmental delay.~~ The developmental delay ~~may or may not~~ does not have to be exhibited at the time of diagnosis, but the common history of the ~~disorder~~ condition indicates the need for early intervention services.

(j) “Evaluation” means the procedures used by qualified personnel to determine a child’s eligibility for early intervention services.

~~(i)~~ (k) “Family” means ~~these persons~~ the individuals identified by the parent or parents of an infant or a toddler with special needs to be “family” involved in developing the individualized family service plan (IFSP) and early intervention services.

(1) “Family service coordinator” means a person who is responsible for coordinating all early intervention services required under part C across agency lines and for serving as the single point of contact for carrying out these early intervention services.

(m) “Family service coordination services” means the services provided by a family service coordinator.

~~(j)~~ (n) “Home-based,” when used to describe a site, means a site identified by ~~the~~ a family as the home where ~~individual~~ individualized services for a child and family are delivered.

(o) “IDEA” means the individuals with disabilities education act, as specified in 20 U.S.C. 1400 et seq.

~~(k)~~ (p) “Individualized family service plan ~~(IFSP)~~” ~~means~~ and “IFSP” mean a written plan for providing early intervention services to an eligible child and the child's family.

(q) “Local community” means a geographic service area with various boundaries, including cities, counties, parts of counties, and multicounty regions, as defined by a local council.

~~(h)~~ (r) “Local fiscal agency” means a legal entity designated by a local council and approved by the secretary that ~~assures~~ ensures compliance with ~~the infant-toddler part C~~ of IDEA grant award and maintains an accounting system that meets the ~~requirement~~ state and federal requirements under IDEA for generally accepted accounting principles for recording receipts, obligations, and disbursements of grant funds.

~~(m)~~ (s) “Local lead agency” means a ~~local agency~~ legal entity designated by the local council and ~~acknowledged~~ approved by the secretary ~~of the lead agency to coordinate agencies, institutions, and organizations used by the local community to carry out its responsibilities for providing services to children from birth through age two who need early intervention services that ensures compliance with part C of IDEA.~~

(t) “Local tiny-k program” means the part C early intervention services network, as determined by the local council, that serves a specific geographic area.

(u) “Local tiny-k program coordinator” means the person designated by the local lead agency to be the central contact for the local tiny-k program.

~~(n)~~ (v) “Mediation” means the community-based process by which participants parties, together with the assistance of ~~a neutral person~~ an impartial individual, move toward resolution or resolve a dispute ~~within the community~~ through discussion of options, alternatives, and negotiation.

(w) “Multidisciplinary IFSP team” means a parent and two or more individuals from separate professions who determine the early intervention services needed.

(x) “Multidisciplinary evaluation and assessment team” means individuals from two or more professions, which may include one individual who is qualified in more than one profession, who complete an assessment and an evaluation.

(y) “Parent” means any of the following:

(1) A biological or adoptive parent of a child;

(2) a foster parent, unless state law or a contractual obligation with a state or local entity prohibits the foster parent from acting as a parent;

(3) a guardian authorized to act as a child’s parent or authorized to make decisions regarding early intervention services, education, health, or development for a child;

(4) an individual acting in the place of a biological or adoptive parent; or

(5) a surrogate parent.

~~(o)~~ (z) “Infant-Toddler Part” “Part C” means the portion of IDEA that describes governs the grant program for states to develop a statewide, comprehensive, coordinated,

multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.

~~(p) “Records” means reports, letters, or other documents that are collected, maintained, or used by the agency in the screening, evaluation, and development of the individualized family service plan or in the delivery of services, or both.~~

(aa) “Party,” when used in K.A.R. 28-4-569 to identify any participant in a complaint proceeding, means the lead agency, any local tiny-k program, any provider of early intervention services, or any person that files a complaint with the lead agency.

(bb) “Payor of last resort” means the federal program that makes part C funds available to pay for early intervention services for an eligible child that are not paid from other public or private sources.

(cc) “Person,” when used in this regulation and in K.A.R. 28-4-569 to identify any participant in a complaint proceeding, means a parent, an individual, or an organization.

(dd) “Potentially eligible,” when used to describe a child, means that the child receives early intervention services at least 90 days before that child’s third birthday or that the child is identified as eligible for part C at least 45 days before that child’s third birthday.

(ee) “Primary referral source” means any of the following:

(1) A hospital;

(2) a physician;

(3) a parent;

(4) a child care program;

- (5) an early learning program;
- (6) a local educational agency;
- (7) a school;
- (8) a public health facility;
- (9) a public health agency;
- (10) a social service agency;
- (11) a clinic;
- (12) a health care provider;
- (13) a public agency in the child welfare system;
- (14) a homeless family shelter; or
- (15) a domestic violence shelter.

~~(g)~~ (ff) “Referral to the local tiny-k program” means a transfer of information by a primary referral source to determine eligibility; for part C or to initiate or continue early intervention services.

~~(r)~~ “Screening” means a brief procedure administered by qualified personnel to identify a child who needs an evaluation. The five developmental domains to screen are the following:

- ~~(1) Cognitive development;~~
- ~~(2) physical development, including health and nutrition, motor, vision, and hearing;~~
- ~~(3) communication development;~~
- ~~(4) social or emotional development; and~~

~~(5) adaptive development.~~

~~(s) (gg) “Screening process” means the clinical observation of or the use of a developmentally appropriate screening tool to study a presumed normal population of infants and toddlers, which may initiate a referral~~ by a local tiny-k program to determine the need for evaluation.

(hh) “Secretary” means secretary of the Kansas department of health and environment.

(Authorized by and implementing K.S.A. ~~1996 Supp.~~ 75-5649; effective Jan. 30, 1995; amended Aug. 15, 1997; amended P-_____.)

K.A.R. 28-4-552. (Authorized by and implementing K.S.A. 1996 Supp. 75-5649; effective Jan. 30, 1995; amended Aug. 15, 1997; revoked P-_____.)

K.A.R. 28-4-556. (Authorized by and implementing K.S.A. 1996 Supp. 75-5649; effective Jan. 30, 1995; amended Aug. 15, 1997; revoked P- _____.)

K.A.R. 28-4-564. Personnel ~~standards~~ requirements. (a) Early intervention services shall be provided by qualified personnel.

(b) Qualified personnel shall meet state-approved or state-recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the ~~person~~ individual is providing early intervention services.

(1) ~~Audiologists~~ Each audiologist shall be licensed by the Kansas department of ~~health and environment~~ for aging and disability services.

(2) ~~Marriage and family therapists~~ Each marriage and family therapist shall be ~~registered by the state of Kansas as meeting requirements including a master's degree in marriage and family therapy or in a related field including social work, psychology, counseling, nursing, medicine, or theology~~ licensed by the Kansas behavioral sciences regulatory board.

(3) ~~Nurses~~ Each nurse shall be licensed as a registered professional ~~nurses~~ nurse by the Kansas board of nursing.

(4) ~~Nutritionists~~ Each nutritionist shall be ~~licensed dietitians~~ a dietitian licensed by the Kansas department of ~~health and environment~~ for aging and disability services.

(5) ~~Occupational therapists~~ Each occupational therapist shall be ~~registered~~ licensed by the Kansas board of healing arts.

(6) ~~Orientation and mobility specialists shall be credentialed by meeting standards established by the association for education and rehabilitation of blind and visually impaired~~
Each orientation and mobility specialist shall meet the following requirements:

(A) (i) Have at least a bachelor's degree with an orientation and mobility endorsement, from an accredited university or college; or

(ii) have a bachelor's degree from an accredited university or college in any field of study and verification of orientation and mobility certification from an accredited university or college; and

(B) have completed 350 hours of supervised practice as an orientation and mobility specialist that includes direct service hours, related telephone calls, meetings, observations, and report writing. The practice shall be supervised by a certified orientation and mobility specialist.

~~(7) Pediatricians and other physicians~~ Each physician, including each pediatrician, shall be licensed by the Kansas board of healing arts and board-certified in the specialty area.

~~(8) Physical therapists~~ Each physical therapist shall be ~~registered~~ licensed by the Kansas board of healing arts.

~~(9) Psychologists~~ Each psychologist shall be ~~either registered or~~ licensed by the Kansas behavioral sciences regulatory board; or ~~credentialed~~ licensed as ~~school psychologists with early childhood endorsement~~ a school psychologist by the Kansas state board of education.

(10) Each family service coordinator shall have a bachelor's degree in education, health studies, nutrition, social welfare, or the human services field and have at least six months of experience in early childhood development. Each individual working as a family service coordinator before June 1, 2013 shall be deemed to have met the education and experience requirements of this paragraph.

~~(11) Social workers~~ Each social worker shall be ~~either~~ licensed by the Kansas behavioral sciences regulatory board; or ~~credentialed as school social workers with early childhood endorsement by the Kansas state board of education.~~

~~(11)~~ (12) ~~Special educators~~ Each special educator and each special instruction provider shall be ~~certified~~ licensed by the Kansas state board of education in early childhood special education ~~by the Kansas state board of education~~ or in early childhood unified education.

~~(12)~~ (13) ~~Speech language pathologists~~ Each speech-language pathologist shall be licensed by the Kansas department ~~of health and environment~~ for aging and disability services.

~~(13)~~ (14) ~~Teachers~~ Each teacher of the hearing-impaired shall be ~~certified~~ licensed as a teacher of the hearing-impaired ~~with early childhood endorsement~~ by the Kansas state board of education.

~~(14)~~ (15) ~~Teachers~~ Each teacher of the blind and visually impaired shall be ~~certified~~ licensed as a teacher of the blind and visually impaired ~~with early childhood endorsement~~ by the Kansas state board of education.

(c) The continuing education ~~experience shall be required to maintain current license requirements for licensure~~, registration, or certification for personnel providing early intervention services shall be determined by the regulatory body governing each profession.

(1) Continuing education ~~experience~~ shall include discipline or cross-discipline ~~offerings~~ when the offerings are information clearly related to the enhancement of the practice, value, skills, and knowledge of working with ~~the~~ children with special needs, from birth through age ~~five~~ two, and their families.

(2) ~~Where~~ If continuing education is a requirement for ~~license~~ licensure, certification, or registration renewal, ~~a minimum of~~ at least one-third of the required number of credits, units, points, or hours shall focus on the content ~~noted~~ specified in paragraph (c)(1), ~~except for early~~

~~childhood special educators, one third of the required continuing education hours shall be relevant to the children with the special needs, from birth through age two, and their families.~~

(3) ~~Where there is no~~ If continuing education is not a requirement for professional credential renewal, twenty-four licensure, certification, or registration renewal, 24 continuing education hours ~~in a three-year period shall be required which~~ that focus on the content ~~described~~ specified in paragraph (c)(1) and are obtained in a three-year period shall be required.

(d) Aides, assistants, and ~~paraprofessionals in early intervention~~ paraeducators in local tiny-k programs shall work under the supervision of a professional in that discipline according to the standards of that profession. (Authorized by and implementing K.S.A. 1993-Supp. 75-5649; effective Jan. 30, 1995; amended P- _____.)

K.A.R. 28-4-565. ~~Community~~ Local tiny-k program responsibilities. (a) Each ~~community~~ local tiny-k program shall have a local ~~interagency coordinating~~ council (~~ICC~~) that has as one of its purposes the coordination of ~~early intervention services~~ part C for infants and toddlers with disabilities and their families.

(1) The local ~~interagency coordinating~~ council shall consist of members who reflect the community, including at ~~a minimum~~ least the following:

(A) ~~two parents of children with disabilities~~ A parent of a child who has received part C services;

(B) a representative of a health or medical agency;

(C) a representative of an educational agency; ~~and~~

(D) a representative of a social service agency; and

(E) a representative of the local tiny-k program.

(2) The names of local ~~interagency coordinating~~ council members shall be submitted to and acknowledged by the ~~state~~ lead agency.

(3) The chair of the local council shall be elected by the local ~~interagency coordinating~~ council. The name of the local council chair shall be ~~communicated~~ provided to the ~~state~~ lead agency. A local council chair shall not be a local tiny-k program coordinator.

(4) The responsibilities of the local ~~interagency coordinating~~ council shall include the following:

(A) Identifying local service providers who can provide early intervention services to infants and toddlers with disabilities and their families;

(B) advising and assisting local service providers; and

(C) communicating, combining, cooperating, and collaborating with other local councils on issues of concern.

(b) Each ~~community~~ local tiny-k program coordinator, in collaboration with ~~its~~ the local ~~ICC council~~, shall develop a plan describing the system for coordinating ~~early intervention services~~ part C. The plan shall include the following:

(1) Identification of a local lead agency, which shall be acknowledged by the secretary of the ~~state~~ lead agency;

(2) identification of a local fiscal agency, which shall be acknowledged by the secretary of the ~~state~~ lead agency. The local lead agency and local fiscal agency may be the same agency, if the local lead agency is a legal entity;

(3) ~~a description of the child find plan, including assurance that child find activities are available at least monthly;~~

~~(4)~~ a description of identified community needs and resources;

~~(5)~~ (4) a description of written interagency agreements or memoranda of understanding, and ~~how~~ the way those agreements or memoranda are used in the development of ~~IFSPs~~ an IFSP for eligible children and their families;

~~(6)~~ (5) a public awareness program that informs community members about child find ~~activities~~, the central point of contact for the community, and the availability of early intervention services;

~~(7)~~ (6) a provision that ~~the services that~~ part C shall be at no cost to eligible infants and toddlers and their families ~~include the following:~~

~~(A) child find activities;~~

~~(B) evaluation and assessments;~~

~~(C) family service coordination; and~~

~~(D) administrative and coordinative activities related to the development, review, and evaluation of the individualized family service plan (IFSP), and implementation of procedural safeguards and other components of the statewide system of early intervention services; and~~

~~(8)~~ (7) an assurance that the information regarding the ~~community~~ plan is available in the community.

(c) Each ~~community desiring federal infant toddler part of IDEA~~ local tiny-k program coordinator and local council requesting part C and state funds shall submit an annual grant application to the state lead agency. ~~This grant application, which~~ shall meet the following requirements:

(1) Include the plan for ~~coordination of early intervention services~~ part C, as described in ~~K.A.R. 28-4-565(b)~~ subsection (b); and

(2) be in compliance with the grant application materials provided by the ~~state~~ lead agency.

(d) Each ~~community~~ local tiny-k program shall be required to utilize multiple funding sources ~~for early intervention services for children with disabilities from birth through age two and their families~~ with part C funds utilized as the payor of last resort. (Authorized by and implementing K.S.A. ~~1996 Supp.~~ 75-5649; effective Jan. 30, 1995; amended Aug. 15, 1997; amended P- _____.)

K.A.R. 28-4-568. Surrogate parents. (a) ~~Participating agencies~~ Each local tiny-k program coordinator, with the assistance of the ~~Kansas department of health and environment~~ secretary, if needed, shall ~~ascertain~~ determine the legal relationship between ~~the adult caregiver~~ a parent and ~~the~~ a child ~~prior to~~ before evaluation and assessment. ~~In Kansas,~~ Each surrogate ~~parents~~ parent shall be known as a child advocates advocate.

(b) ~~The Kansas department of health and environment, in conjunction with participating agencies,~~ lead agency shall assign a child advocates advocate to ~~the~~ a child if at least one of the following conditions is met:

(1) No ~~parents~~ parent can be identified; .

(2) ~~The public agency~~ A local tiny-k program, after reasonable efforts, cannot ~~discover~~ locate ~~the whereabouts of the parents; or~~ locate a parent.

(3) The child is ~~a ward~~ in the custody of the state under the laws of Kansas, and parental rights have been severed.

(c) The method used for assigning a child advocate shall be as follows: .

(1) ~~Local agencies~~ Each local tiny-k program shall inform the ~~Kansas department of health and environment~~ lead agency or its contracting agency upon determining that a child needs a child advocate.

(2) ~~The Kansas department of health and environment shall assist the~~ Each local agency tiny-k program shall be assisted in locating an appropriate child advocate ~~or the~~ by the secretary. A child advocate shall be assigned under the authority of the ~~Kansas department of health and environment~~ lead agency or, if the child is in the custody of the state, appointed by the district court having jurisdiction over the custody proceedings for the child.

(d) ~~The~~ Each child advocate shall be selected from a list ~~maintained by the Kansas department of health and environment~~ of individuals who have completed training in advocacy for individuals or have demonstrated knowledge of the power, duties, and ~~Kansas~~ functions necessary to provide adequate representation of ~~the~~ a child. This list shall be maintained by the lead agency or its contracting agency.

(e) ~~The participating agency~~ lead agency or its contracting agency shall ensure that a ~~person~~ each individual selected as a ~~surrogate parent~~ child advocate meets the following conditions:

(1) Has no interest that conflicts with the interests of the child ~~whom he or she represents~~ and;

(2) has knowledge and skills that ensure representation of the child; and

~~(f) A person assigned as a child advocate shall not:~~

~~(1) (3) be is not~~ an employee of the lead agency or any agency involved in the provision of early intervention services or any other services to the child; ~~or~~ .

~~(2) (f) be an employee solely because he or she~~ A child advocate shall not be considered an employee of the lead agency or any agency involved in the provision of early intervention services or any other services to the child solely because the individual is paid by a public agency to serve as a child advocate.

(g) A Each child advocate shall ~~represent the child in all matters related to:~~ have the same rights as those of a parent under part C.

~~(1) the evaluation and assessment of the child;~~

~~(2) development and implementation of the child's IFSP, including annual evaluations and periodic reviews;~~

~~(3) the ongoing provision of early intervention services to the child; and~~

~~(4) any other rights established under this part.~~

(g) The contracting agency shall make reasonable efforts to ensure that a child advocate is assigned to a child less than 30 days after it is determined that the child needs a child advocate.

(Authorized by and implementing K.S.A. ~~1993 Supp.~~ 75-5649; effective Jan. 30, 1995; amended

P- _____.)

K.A.R. 28-4-569. Resolution of complaints. ~~(a) For complaints not resolved informally at the local level, resolution shall be accomplished by the use of mediation, a due process hearing, or both. A parent or an agency providing service shall register with the Kansas department of health and environment a complaint leading to mediation, a due process hearing, or both.~~

~~(b) The local lead agency shall, through agreements with local service providers, assure that procedural safeguards are followed and enforced.~~

~~(c) The mediation process shall meet the following requirements:~~

~~(1) be offered to parents as an option but shall not delay or extend the 30-day due process procedure;~~

~~(2) be requested by the parents or the agency and have the agreement of both parties before entering into the process; and~~

~~(3) be completed or at impasse within seven calendar days of the local interagency coordinating council's receipt of the complaint.~~

~~(d) If at impasse or the time has elapsed, the complaint shall be forwarded to the Kansas department of health and environment within eight days from the time the complaint was registered with the Kansas department of health and environment.~~

~~(e) Mediators appointed by the Kansas department of health and environment shall meet the following requirements:~~

~~(1) have knowledge about the provisions of infant-toddler part of IDEA and the needs of, and services available for, eligible children and their families;~~

~~(2) have training in the mediation process;~~

~~(3) shall not be an employee of any agency or program involved in the direct provision of early intervention services or care of the child, and shall not have a personal or professional interest that would conflict with his or her objectivity in implementing the process;~~

~~(4) be selected by mutual agreement of the parents and the local agency; and~~

~~(5) perform the following duties:~~

~~(A) listen to presentations of both parties to find out facts and isolate issues;~~

~~(B) assist in the development of creative alternatives to resolve the complaint;~~

~~(C) facilitate negotiation and decision making;~~

~~(D) provide, if resolution occurs, a written record of the proceedings, including the decision or solution to the participant and the Kansas department of health and environment; and~~

~~(E) forward, if no resolution within the time limit or impasse occurs, the complaint to the Kansas department of health and environment within one day by telephone, followed within two working days by written documentation of the complaint and mediation activities.~~

~~(f) Parents' rights in mediation shall consist of the following:~~

~~(1) presenting their complaint and other relevant information and facts;~~

~~(2) hearing the relevant and factual information of the other participants;~~

~~(3) presenting their desired outcome of the complaint and alternative ways to achieve the solution;~~

~~(4) exploring with other parties other possible solutions; and~~

~~(5) having the mediation proceedings conducted in their native language at a convenient time and place.~~ Complaints. Any person believing that there has been any violation of part C may file a complaint with the lead agency. A complaint may allege any violation of part C that occurred no more than one year before the lead agency received the complaint.

(b) Complaint proceedings. Any person who files a complaint may participate in the resolution of the complaint through one or more of the proceedings specified in subsections (c), (d), and (e), which may occur individually or simultaneously. Each person shall be responsible for that person's legal fees.

(c) Formal complaint. Any person may file a formal complaint against the lead agency, any local tiny-k program, or any provider of early intervention services, or any combination of these.

(1) Each formal complaint shall be submitted on a form provided by the lead agency or shall be submitted as a written and signed statement that includes the following information:

(A) Any alleged violations of part C requirements;

(B) the alleged circumstances on which the formal complaint is based;

(C) the contact information of the person filing the formal complaint; and

(D) a proposed resolution to the extent known and available to the person.

(2) If the formal complaint alleges any violation regarding a specific child, the formal complaint shall include the following additional information:

(A) The child's name and address;

(B) the name of the local tiny-k program providing early intervention services for the child;

(C) a description of any alleged violations regarding the child; and

(D) a proposed resolution of the problem, to the extent known and available to the person.

(3) Any person may submit additional written information about the allegations in the formal complaint within five days after filing the formal complaint.

(d) Mediation. A mediation may be requested by any party.

(1) A mediation shall be conducted if it meets the following requirements:

(A) Is voluntary by each party;

(B) does not deny or delay a parent's right to a due process hearing or any other rights under part C; and

(C) is conducted by an impartial mediator trained in mediation techniques.

(2) Each mediator appointed by the lead agency shall meet the following requirements:

(A) Be selected on a random or impartial basis by the lead agency;

(B) have knowledge of the laws and regulations relating to early intervention services;

(C) not be an employee of the lead agency or the provider of early intervention services;

and

(D) be impartial and not have a private or professional interest in the outcome of the mediation.

(3) Each mediation shall be scheduled by agreement of each party and shall be held in a location convenient to each party.

(4) Each mediator shall perform the following duties:

(A) Listen to the presentation of each party to determine facts and issues;

(B) assist in the development of creative alternatives to resolve the complaint; and

(C) facilitate negotiation and decision making.

(5) If the parties resolve a dispute through mediation, the parties shall execute a legally binding mediation agreement.

(6) All discussions that occur during a mediation shall remain confidential.

(e) Due process hearing. Each due process hearing shall be conducted by a hearing officer who has knowledge of part C and early intervention services.

(1) Each due process hearing shall be conducted at a time and place convenient to the parents.

(2) Each hearing officer shall meet the requirements for impartiality specified in paragraph (d)(2), except that the hearing officer shall be selected by the office of administrative hearings.

(3) The hearing officer shall perform the following duties:

(A) Schedule the hearing;

(B) listen to each party's presentation;

(C) examine the information presented by each party;

(D) issue a written decision and provide the written decision to each party within 30 days after the lead agency receives the due process complaint; and

(E) provide a written or electronic verbatim transcription of the hearing.

(4) Each parent involved in a due process hearing shall have the following rights:

(A) To be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services;

(B) to present evidence and testimony from witnesses;

(C) to prohibit the introduction of any evidence that has not been disclosed to the parent at least five days before the hearing; and

(D) to be provided with the written decision of the hearing officer and the verbatim transcription of the hearing at no cost.

(f) Each local lead agency and each local fiscal agency shall be responsible for the costs of remediation of part C complaints through formal complaint, mediation, or due process hearing proceedings, except legal fees. (Authorized by and implementing K.S.A. ~~1996 Supp.~~ 75-5649; effective Jan. 30, 1995; amended Aug. 15, 1997; amended P- _____.)

K.A.R. 28-4-573. System of payments. (a) Part C funds shall be available at no cost to a family even if that family provides consent to bill third-party sources, including private insurance.

(b) Funds under part C may be used only for early intervention services that infants and toddlers with disabilities need if the early intervention services are not paid for by any other federal source or any Kansas, local, or private source, in accordance with 34 C.F.R. 303.520.

(Authorized by and implementing K.S.A. 75-5649; effective P-_____.)